

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ARTURO DELIZ VELEZ, et al.,

Plaintiffs,

v.

CIVIL NO. 02-1869 (PG)

PUERTO RICO ELECTRIC POWER
AUTHORITY, et al.,

Defendants.

REPORT AND RECOMMENDATION

Before the Court is defendant Puerto Rico Electric Power Authority ("PREPA"), et al.'s (jointly referred to as the "defendants") *Motion for Summary Judgment* (Docket No. 302), requesting dismissal of the claims brought forth against them by Arturo Deliz-Vélez ("Deliz-Vélez"), et al. (jointly referred to as the "plaintiffs").

After careful review of all the evidence and material facts, the Court **RECOMMENDS** that the defendants' *Motion for Summary Judgment* (Docket No. 302) be **GRANTED** in part and **DENIED** in part.

I. STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides for the entry of summary judgment in a case where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c); Pagano v. Frank, 983 F.2d 343, 347 (1st Cir.1993); Lipsett v. University of Puerto Rico, 864 F.2d 881, 894 (1st Cir.1988). See also Velázquez Hernández, Jorge, The Federal Rules of Evidence, Civil and Criminal Procedure, As Interpreted by the First Circuit Court of Appeals and the U.S. District of Puerto Rico, p.202-212 (2000).

Summary judgment is appropriate where, after drawing all reasonable inferences in favor of the party against whom summary judgment is sought, there is not the slightest doubt as to whether a genuine issue of material fact exists. Kennedy v. Josephthal & Co., Inc., 814 F.2d 798, 804 (1st

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3 Cir.1987). A "genuine" issue is one that is dispositive, and which consequently must be decided at
4 trial. Mack v. Great Atlantic and Pacific Tea Co., 871 F.2d 179, 181 (1st Cir.1989); Anderson v.
5 Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). A material fact, which is defined by the
6 substantive law, is one which affects the outcome of the suit and which must be resolved before
7 attending to related legal issues. Mack, 871 F.2d at 181.

8 The party filing a motion for summary judgment bears the initial burden of proof to show
9 "that there is an absence of evidence to support the non- moving party's case." Celotex Corp. v.
10 Catrett, 477 U.S. 317, 325 (1986). Thereafter, the burden shifts to the non-movant to provide the
11 Court, through the filing of supporting affidavits or otherwise, with "some indication that [it] can
12 produce the quantum of evidence [necessary] to enable [it] to reach the jury with [its] claim." Hahn
13 v. Sargent, 523 F.2d 461, 468 (1st Cir.1975), cert. denied, 425 U.S. 904 (1976). The non-movant
14 cannot rest upon mere allegations or denial of the pleadings. Fed.R.Civ.P. 56(e). Indeed, the
15 non-movant must affirmatively show that "sufficient evidence supporting the claimed factual dispute
16 [exists] to require a jury or judge to resolve the parties' differing versions of truth at trial." First Nat.
17 Bank of Ariz. v. Cities Service Co., 391 U.S. 253, 288-89 (1968), reh'g denied, 393 U.S. 901 (1968).

18 **II. LEGAL ANALYSIS**

19 **A. Prima Facie Case of Political Discrimination**

20 In the present case, the defendants allege that outside of the parties' rival political affiliation
21 the plaintiffs have not produced any evidence to support a finding of discriminatory animus.
22 *Memorandum in Support of Summary Judgment*, p. 4 (Docket No. 303). In the alternative, the
23 defendants allege that if the Court were to find that the plaintiffs have established a prima facie case
24 of political discrimination, the proffered non-discriminatory reasons set forth should warrant the
25 complaint's dismissal. Id.

26 A plaintiff alleging political discrimination bears the burden of "producing sufficient
27 evidence that she engaged in constitutionally protected conduct and that political affiliation was a
28 substantial or motivating factor behind the challenged employment action." González-De-Blasini
v. Family Dept., 377 F. 3d. 81, 85 (1ST Cir. 2004). "The plaintiff must point to evidence on the record

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2 which, if credited, would permit a rational fact finder to conclude that the challenged personnel
3 action occurred and stemmed from a politically based discriminatory animus.” *Id.* This showing
4 requires more than merely juxtaposing a protected characteristic, such as differing political ideal,
5 with the fact that the plaintiff was treated unfairly. *Padilla-García v. Rodríguez*, 212 F. 3d. 69, 74
6 (1ST Cir. 2000).

7 Notwithstanding, even if the plaintiffs demonstrate that their political affiliation was a
8 substantial factor in the adverse employment actions alleged, the Court will find in the defendants’
9 favor if they are able to show both that (1) they would have taken the same action in any event, and
10 (2) that they would have taken that action for reasons that are not unconstitutional. *Mt. Healthy City*
11 *School Dist Bd. of Educ. v. Doyle*, 429 U.S. 274 (1977); *Sánchez-López v. Fuentes-Pujols*, 375 F.
12 3d. 121, 124 (1ST Cir. 2004).

13 In the case at bar, the evidence of record shows that while employed at the PREPA, Deliz-
14 Vélez was appointed by former governor Pedro Roselló, then president of the New Progressive Party
15 (“NPP”), as Director of Youth Affairs, a trust position. ¶ 3, *Statement of Uncontested Facts*, p. 2
16 (Docket No. 305). Upon said appointment, Deliz-Vélez was granted “voluntary separation” from his
17 career post at the PREPA by then executive director Miguel Cordero (“Cordero”). *Id.*; Plaintiffs’
18 **Exhibit 2**, *April 28, 1995 Letter* (Docket No. 329). Thereafter, upon Deliz-Vélez’ appointment for
19 a second term as Youth Affairs Director, again by former governor Roselló, his voluntary separation
20 was extended for an additional three year period by Cordero. ¶ 4, *Statement of Uncontested Facts*,
21 p. 2 (Docket No. 305); Plaintiffs’ **Exhibit 3**, *March 11, 1998 Letter* (Docket No. 329). After said
22 term, and following the PDP’s victory in the 2000 elections, Deliz-Vélez was reinstated in his career
23 position as Juridical Investigator I. ¶ 4, *Statement of Uncontested Facts*, p. 2 (Docket No. 305). Only
24 a few months after returning to the PREPA, Deliz-Vélez’ salary was reduced from \$35,002.50 to
25 30,049.50 annually, in a decision admittedly recommended by Human Resources Director Ana
26 Blanes (“Blanes”), a staunch Popular Democratic Party (“PDP”) militant.¹ Plaintiffs’ **Exhibit 7**,

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28 ¹ Blanes admitted she is the President of “Energía Popular”, a PDP organization within the
PREPA. Plaintiffs’ **Exhibit 7**, *Deposition of Ana Blanes*, p. 33 (Docket No. 329).

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2 *Deposition of Ana Blanes*, p. 33-34, 55 (Docket No. 329). In light of the before-mentioned facts, and
3 viewing the evidence in the light most favorable to the non-movant, the Court concludes that the
4 plaintiffs have met their burden of establishing a prima facie case of political discrimination, which
5 is not an onerous one. See generally *Simas v. First Citizens' Federal Credit Union*, 170 F. 3d. 37,
6 45 (1ST Cir. 1999). Having done so, the defendants next claim that their decision to lower Deliz-
7 Vélez' salary was justified, and that dismissal is warranted pursuant to *Mt. Healthy*. 429 U.S. 274.

8 In support of their decision to reduce Deliz-Vélez' salary at PREPA upon his reinstatement
9 as Juridical Investigator I, the defendants allege that they were prompted by a study conducted in
10 regards to various employment transactions allegedly performed during the electoral prohibition.
11 *Memorandum in Support of Summary Judgment*, p. (Docket No. 303). After requesting and receiving
12 some legal opinions as to the lawfulness of such transactions, Blanes commissioned an analysis of
13 said transaction, performed by Aníbal Hernández ("Hernández"). *Id.*; ¶ 8-10, *Statement of*
14 *Uncontested Facts*, p. 3 (Docket No. 305). After gathering all the relevant information, Hernández
15 proceeded to analyze the validity of the reinstatements and the assigned salaries. ¶ 11, *Id.* Upon
16 completion of the analysis, various transactions, including Deliz-Vélez' reinstatement and assigned
17 salary, were allegedly found to have contravened local law and regulations. ¶ 12, *Id.*; *Memorandum*
18 *in Support of Summary Judgment*, p. 7 (Docket No. 303). As a result, the PREPA brass decided to
19 reduce Deliz-Vélez' salary accordingly.² ¶ 18, *Statement of Uncontested Facts*, p. 3 (Docket No.
20 305); *Memorandum in Support of Summary Judgment*, p. 7 (Docket No. 303).

21 The plaintiffs, however, allege that the study was merely a pretext for the defendants'
22 discriminatory intent. To that effect, they allege that only NPP militants were subject to the
23 transaction analysis, and that the defendants never took into account the legal opinions requested in
24 regards to said employment transactions. *Memorandum in Opposition of Motion for Summary*

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27 ² The defendants further contend that the decision to lower Deliz-Vélez' salary, was ratified
28 by PREPA's governing board. However, the evidence pointed to only establishes that a presentation
of that nature was given to the board. No evidence as to actual approval is provided. See ¶ 15,
Statement of Uncontested Facts, p. 5 (Docket No. 303); Defendants' **Exhibit 13**, *Presentation to*
PREPA Governing Board (Docket No. 305).

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2 *Judgment*, p. 8 (Docket No. 325). According to the plaintiffs, “there was a meeting of mind between
3 the co-defendants to tortiously [interfere], persecute and [politically] discriminate” against the
4 defendants. Id.

5 While the plaintiffs do raise serious issues of fact, they have patently failed to support such
6 allegations, with the exception of their claim against co-defendant Blanes discussed below, with the
7 evidence of record. In opposing summary judgment, a plaintiff has an affirmative duty to put his best
8 foot forward in an effort to present some legal theory to support his claim. CMM Cable Rep, Inc. v.
9 Ocean Coast Properties, Inc., 97 F. 3d. 1504, 1526 (1ST Cir. 1996). In the case at bar, other than in
10 reference to the parties’ differing political views, the plaintiffs rely almost exclusively on
11 unsupported allegations, and expect the Court to deny summary judgment on the alleged existence
12 of credibility issues. However such statements, allegations, and claims must be supported by the
13 evidence of record to create an issue of material fact. At the summary judgment stage, the “non-
14 movant may not rest on mere allegations, but must produce evidence which would be admissible at
15 trial to make out the requisite issue of material fact. Proof based on arrant speculation, optimistic
16 surmise or farfetched inference will not suffice.” Kelly v. United States, 924 F. 2d. 355, 357 (1ST Cir.
17 1991); Fed. R. Civ. P. 56 (e).

18 Specifically, the record is barren, and the plaintiffs fail to point to, evidence which establishes
19 that the employment study was conducted exclusively as to members of the NPP. See Plaintiffs’
20 **Exhibit 7**, *Deposition of Ana Blanes*, p. 10 (Docket No. 336 & 342) (stating that she could not verify
21 whether all the employment transactions scrutinized where of NPP followers). Likewise, the
22 plaintiffs’ bald assertion that the defendants did not consider the legal opinions is clearly
23 unsubstantiated. Consequently, the Court **RECOMMENDS** that the defendants’ motion for
24 summary judgment be **GRANTED** as to the plaintiffs’ Section 1983 claim of political
25 discrimination, with the exclusion of co-defendant Blanes.

26 The evidence of record, however, establishes a triable issue as to co-defendant Blanes’
27 conduct. Amidst all the evidence presented by both parties, the Court notes that Blanes, who
28 prompted the employment transaction study which eventually served as a basis to reduce Deliz-
Vélez’ salary, merely discussed the report’s findings with Hernández, but did not verify its contents,

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2 or request any supporting evidence. Plaintiffs' **Exhibit 7**, *Deposition of Ana Blanes*, p. 20-21, 63
3 (Docket No. 336 & 342). Moreover, Blanes stated that, at the time the decision to lower Deliz-Vélez'
4 salary, she was unaware that Deliz-Vélez had been working as Executive Director of the Puerto Rico
5 Youth Affairs Office. This is a noteworthy fact considering that such authorization was explicitly
6 provided by the previous PREPA director in writing on two separate occasions. *Id.*, p. 23; *See*
7 Plaintiffs' **Exhibits 2 and 3**, *Authorizations from former PREPA director Miguel A. Cordero*.
8 Furthermore, as Director of Human Resources at PREPA, Blanes was in charge of "advising,
9 counseling, and making recommendations to the executive director." Plaintiffs' **Exhibit 7**,
10 *Deposition of Ana Blanes*, p. 30 (Docket No. 336 & 342). However, in doing so in regards to Deliz-
11 Vélez' reinstatement and assigned salary, Blanes did not discuss individual cases with the director,
12 nor did she provide a list employees whose transactions and/or salaries were questioned, or any
13 supporting documentation. *Id.*, p. 50-51. Hence, there exist sufficient issues of material fact to
14 warrant the **DENIAL** of the defendants' motion for summary judgment as to Blanes.

15 In sum, the Court **RECOMMENDS** that the defendants' motion for summary judgment be
16 **GRANTED** as to the plaintiffs' Section 1983 claim. However, said claim should be **DENIED** as
17 to co-defendant Ana Blanes.

18 *B. Due Process Claim*

19 The defendants allege that, since Deliz-Vélez' reinstatement was illegal, he possessed no
20 property right over said employment and the relative salary, for which the plaintiffs' due process
21 claim should be dismissed. *Memorandum in Support of Motion for Summary Judgment*, p. 9 (Docket
22 No. 303). The plaintiffs counter by alleging that Deliz-Vélez did in fact hold a career position, to
23 which Puerto Rico law grants a property interest, and that said issue was already dealt with in prior
24 state proceedings, for which the Court should apply the res judicata doctrine to defendants' claim.
25 *Plaintiffs' Memorandum in Opposition of Motion for Summary Judgment*, p. 23-26 (Docket No.
26 325).

27 According to the doctrine of res judicata, a judgment on the merits in a prior suit bars a
28 second suit involving the same parties or their privies based on the same cause of action. *Parklane*
Hosiery Co., Inc. v. Shore, 439 U.S. 322, 326 n. 5 (1979). Pursuant to 28 U.S.C. § 1738, judicial

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2 proceedings of any court of any State, Territory or Possession shall have the same full faith and
3 credit in every court within the United States as they have by law or usage in the courts of such State,
4 Territory or Possession. See Cruz v. Melecio, 204 F. 3d. 14, 18 (1ST Cir. 2000). Consequently, state
5 law applies in determining the res judicata effect of a state court judgment in federal court. Id.

6 Accordingly, Article 1204 of the Puerto Rico Civil Code requires that, in order for claim
7 preclusion to apply between two separate proceedings, there exist “perfect identity between the
8 things, causes and persons of the litigants and their capacity as such.” P.R. Laws Ann. Tit. 31 § 3343.
9 Muñiz-Cortés v. Intermedics, Inc., 229 F. 3d. 12 (1ST Cir. 2000).

10 In reviewing the evidence of record, particularly that related to the state administrative and
11 appellate proceedings, the Court notes that the issue of whether Deliz-Vélez was a career employee
12 was already answered in the affirmative. Plaintiffs’ **Exhibit 9**, *February 22, 2002 Resolution*, p. 9
13 (Docket No. 331); Plaintiffs’ **Exhibit 10**, *April 9, 2002 Resolution*, p. 3-4 (Docket No.). The
14 defendants’ claim to the contrary was found “merit[less]” and “frivolous” by the official examiner
15 who oversaw the administrative proceedings. Plaintiffs’ **Exhibit 10**, *April 9, 2002 Resolution*, p. 3
16 (Docket No. 329). Said officer’s findings and conclusions were subsequently upheld on appeal to
17 the Puerto Rico Court of Appeals. Plaintiffs’ **Exhibit 11**, *Puerto Rico Appeals Court Decision*
18 (Docket No. 332). The Puerto Rico Supreme Court subsequently denied certiorari. Plaintiffs’
19 **Exhibits 13 and 14**, *Puerto Rico Supreme Court Rulings* (Docket No. 336).

20 Moreover, the Court notes that Puerto Rico’s res judicata doctrine precludes claims that were
21 **or could have been raised** in a previous action. See generally Parklane Hosiery, 439 U.S. at 326 n.
22 5; Giles-Toro v. U.P.R., 183 F. Supp. 2d. 457, 464 (2001). The evidence before the Court lacks any
23 proof to the effect that the defendants’ allegation as to the alleged illegality of Deliz-Vélez’
24 appointment was ever raised at the administrative level. As mentioned, the only challenges to Deliz-
25 Vélez’ designation were disposed of by the official examiner. Plaintiffs’ **Exhibit 10**, *April 9, 2002*
26 *Resolution*, p. 3 (Docket No. 329). Consequently, those claims not raised before the administrative
27 agency were waived, and cannot be considered by the Court. Comm. Of Mass., Dept. of Public
28 Welfare v. Secretary of Agriculture, 984 F. 2d. 514, 524 (1ST Cir. 1993) (“ as a general matter, courts
will not entertain an issue that the parties failed to raise in the proper administrative venue unless

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2 the issue is jurisdictional in nature or some other compelling reason exists”).

3 The Court finds that Deliz-Vélez’ standing as a career officer was resolved during the
4 administrative proceedings, for which the doctrine of res judicata is applicable. Furthermore, in the
5 absence of any “compelling reason” to rule otherwise, the Court concludes that the defendants’ claim
6 as to the illegality of Deliz-Vélez’ appointment was waived by not being raised at the administrative
7 level. Hence, the Court **RECOMMENDS** that summary judgment be **DENIED** as to the plaintiffs’
8 Due Process claim.

9 *C. Hostile Work Environment*

10 In viewing a hostile work environment claim, the Court must consider factors such as the
11 frequency of the alleged discriminatory conduct, its severity, whether it is physically threatening or
12 humiliating, or a mere offensive utterance; and whether it interferes with an employee’s work
13 performance. Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993). Evidence of remarks,
14 innuendos, ridicule and intimidation may be sufficient to support a hostile work environment claim.
15 O’Rourke v. City of Providence, 235 F. 3d. 713, 729 (1ST Cir. 2001). Moreover, the accumulated
16 effect of incidents of humiliating, offensive comments, taken together, can also constitute a hostile
17 work environment. Id.

18 Deliz-Vélez has alleged that he was the victim of a hostile work environment in so much as
19 he was not considered for other positions within PREPA for which he applied and was qualified, he
20 was asked to remove various photos and Unites States’ flags which adorned his desk, he was
21 reassigned to a smaller workspace, he was the victim of various discriminatory remarks, and his
22 absences were charged to “the licence with symbol ‘J’.” *Memorandum in Opposition to Motion for*
23 *Summary Judgment*, p. 36-41 (Docket No. 325). The Court may not scrutinize Deliz-Vélez’
24 allegations individually, rather the atmosphere *as a whole* must be considered. DeNovellis v. Shalala,
25 124 F. 3d. 298, 311 (1st Cir. 1997).

26 The defendants allege that Deliz-Vélez was not selected for the various positions he applied
27 for because he failed to meet certain selection criteria. Such criteria is provided by the defendants,
28 however, they do not abound as to how Deliz-Vélez failed to comply with said requirements.
Memorandum in Support of Summary Judgment, p. 12-14 (Docket No. 303). This is particularly

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2 troubling when considering that, as stated by the plaintiffs, the defendants knew Deliz-Vélez had
3 occupied a high ranking administrative office³ within the previous administration, for which claims
4 of lack of experience cannot be summarily affirmed.

5 _____Moreover, the plaintiffs have set forth evidence that indicates that Deliz-Vélez was asked by
6 co-defendant Eddie Cuevas to take down various pictures featuring him with, among others, former
7 governor Pedro Roselló and his wife, Bob Dole, Mickey Mouse, a few artists, and some South
8 American political figures. Plaintiffs' **Exhibit 23**, *Deposition of Arturo Deliz-Vélez*, p. 37 (Docket
9 No. 342); *Memorandum in Opposition of Motion to Summary Judgment*, p. 39 (Docket No. 325).

10 While the defendants allege that such a decision was made according to a Puerto Rico law
11 prohibiting public employees from exhibiting political paraphernalia at their work,⁴ Deliz-Vélez has
12 alleged that a co-worker who had a picture of a Popular Democratic Party ("PDP") figure on her desk
13 was not treated in the same manner. *Id.*, p. 40, 48. Additionally, the evidence presented by the
14 defendants to justify their action states that such statute was signed into law on January 3, 2003, over
15 five months after the filing of the complaint in the instant case. Defendants' **Exhibit 24**, *February*
16 *9, 2004 Letter* (Docket No. 305). Deliz-Vélez goes on to claim that another PDP affiliated employee
17 stated to him that the pictures were offensive, and threatened to place a picture of former Governor
18 Sila Calderón, a member of the PDP, in his cubicle. *Id.*, 49.

19 _____Consequently, the record contains various instances of alleged hostile conduct on the part of
20 defendants toward Deliz-Vélez. As a result, the Court finds that the plaintiffs have raised sufficient
21 issues of material fact, pursuant to *Harris v. Forklift Systems, Inc.*, 510 U.S. at 23, to warrant
22 **RECOMMENDING DENIAL** of the defendants' motion for summary judgment, as to the
23 plaintiffs' hostile work environment claim.

24 *D. Qualified Immunity*

25 Qualified immunity is not a defense on the merits, but rather an entitlement not to stand trial
26 _____

27 ³ ¶ 3, *List of Uncontested Facts*, p. 2 (Docket No. 305).

28 ⁴ ¶ 30, *Statement of Uncontested Facts*, p. 9 (Docket No. 305).

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2 or face the countless other burdens of litigation. Saucier v. Katz, 533 U.S. 194, 200 (2001). The
 3 threshold inquiry must be whether the facts, taken in the light most favorable to the party claiming
 4 injury, show that an officer's conduct violated a statutory or constitutional right. Forest v. Pawtucket
 5 Police Dept., 377 F. 3d. 52, 56 (1ST Cir. 2004). If such inquiry results in the affirmative, the court
 6 must determine whether that right was clearly established at the time of the official's alleged
 7 violation. Wilson v. Layne, 526 U.S. 603, 609 (1999). Only after both these questions are answered
 8 affirmatively should the Court address the particular conduct in question to decide whether an
 9 objectively reasonable official would have believed that his conduct was lawful in light of the clearly
 10 established law and the information possessed at the time of the allegedly wrongful conduct. Abreu-
 11 Guzmán v. Ford, 241 F. 3d. 69, 73 (1ST Cir. 2001); McBride v. Taylor, 924 F. 2d. 386, 389 (1ST Cir.
 12 1991).

13 In the case at bar, the defendants have limited their qualified immunity argument to a brief
 14 synopsis of the applicable law, and a mere one paragraph claim that co-defendants Héctor Rosario
 15 ("Rosario") and Ana Blanes ("Blanes") did not violate a clearly established law, or "that they knew
 16 or should have known about it." *Memorandum of Law in Support of Summary Judgment*, p. 25
 17 (Docket No. 303). However, such a skeletal argument is insufficient to warrant qualified immunity.

18 _____ For the reasons set forth in subsection A of this Report and Recommendation, the Court finds
 19 that their exist sufficient issues of material fact to warrant denial of qualified immunity as to co-
 20 defendant Blanes. Moreover, the Court is of the opinion that the defendants meager attempt to
 21 substantiate a qualified immunity claim does not suffice their initial burden of initial burden of proof
 22 to show "that there is an absence of evidence to support the non- moving party's case." Celotex Corp.
 23 v. Catrett, 477 U.S. 317, 325 (1986). The Court is not obligated to delve the record in search for
 24 evidence to support the defendants' claim. See United States v. Marks, 365 F. 3d 101, 107 (1st Cir.
 25 2004) (citing United States v. Zannino, 895 F. 2d 1, 7 (1st Cir. 1990) ("It is not enough merely to
 26 mention a possible argument in the most skeletal way, leaving the court to do counsel's work.")).
 27 Hence, the Court **RECOMMENDS** that summary judgment be **DENIED** as to the defendants'
 28 qualified immunity claim.

E. Plaintiff Evelyn Orengo-González

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2 Lastly, the defendants request dismissal of plaintiff Evelyn Orengo-González' ("Orengo-
3 González") claim of political discrimination. Orengo-González claims to have been the victim of
4 numerous discriminatory acts, including having certain medical-related absences charged to her
5 vacation time, failing to provide her with an adequate office near the employee she supervised,
6 failing to consider her for the position of Supervisor of the Quality Control Office, and denying her
7 a parking space closer to her office. Orengo-González claims that the before-mentioned acts were
8 a result of the defendants discriminatory animus, and varied from the treatment given to PDP
9 affiliated co-workers. ¶¶ 61-66, *Amended Fourth Amended Complaint*, p. 25-28 (Docket No. 172).

10 As with Deliz-Vélez, the defendants have defended their actions pursuant to Mt. Healthy
11 City. 429 U.S. 274. To that effect, the defendants point to numerous declarations made by Orengo-
12 González in her deposition as probative of the absence of issues of material fact. See ¶ 45, *Statement*
13 *of Uncontested Facts*, p. 13 (Docket No. 305). However, as correctly noted by the plaintiffs, the said
14 exhibit is absent from the case docket. Hence, while the defendants did include a copy of such in the
15 courtesy copy of exhibits presented to the undersigned's chambers, the Court cannot consider
16 Orengo-González' deposition in resolving the present matter. Fed. R. Civ. P. 56 (c) (summary
17 judgment shall be rendered if the "pleadings, **depositions**, answers to interrogatories, and admissions
18 **on file**," show that there is no genuine issue of material fact) (emphasis added).

19 In light of the fact that the defendants' grounds for summary judgment as to Orengo-
20 González hinge exclusively on said evidence, the Court **RECOMMENDS DENIAL** of the
21 defendants motion for summary judgment as to her claim of political discrimination.

22 CONCLUSION

23 **WHEREFORE**, the Court hereby **RECOMMENDS** that the defendants' *Motion for*
24 *Summary Judgment*. (Docket No. 302) be **GRANTED** in part and **DENIED** in part.

25 Under the provisions of Rule 72 (d), Local Rules, District of Puerto Rico, any party who
26 objects to this report and recommendation must file a written objection thereto with the Clerk of the
27 Court within ten (10) days of the party's receipt of this report and recommendation. The written
28 objections must specifically identify the portion of the recommendation, or report to which objection
is made and the basis for such objections. Failure to comply with this rule precludes further

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appellate review. See Thomas v. Arn, 474 U.S. 140, 155 (1985), reh'g denied, 474 U.S. 1111 (1986); Davet v. Maccorone, 973 F. 2d 22, 30/31 (1st Cir. 1992).

IT IS SO RECOMMENDED

Date: February 28, 2005

S/ Gustavo A. Gelpí
GUSTAVO A. GELPÍ
U.S. Magistrate Judge